

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PROPOSED RULEMAKING

The Department of Housing and Community Development, pursuant to authority set forth in Section 2062 of the Tax Abatements for Affordable Housing in High-Needs Areas Amendment Act of 2020, (the “Act”), effective December 3, 2020 (D.C. Law 23-149; D.C. Official Code § 47-859.06), and Mayor’s Order 2021-040, dated March 24, 2021, hereby gives notice of the intent to adopt a new Chapter 64 (Tax Abatements For Affordable Housing In Areas With High Needs of Affordable Housing) of Subtitle B (Planning and Development) of Title 10 (Planning and Development) of the District of Columbia Municipal Regulations (“DCMR”) in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

The purpose of the rulemaking is to implement the provisions of the Act, which authorizes tax abatements as incentives for the production of new affordable housing in the Rock Creek West, Rock Creek East, Capitol Hill, and Upper Northeast planning areas, identified in the District’s Housing Equity Report, released in October 2019, as areas in high-need for affordable housing.

Specifically, the rulemaking would establish the conditions precedent to receiving a tax abatement, the process for applying and receiving one, and requirements for on-going compliance.

Title 10-B DCMR is amended by adding a new Chapter 64 to read as follows:

CHAPTER 64 TAX ABATEMENTS FOR AFFORDABLE HOUSING IN AREAS WITH HIGH NEEDS OF AFFORDABLE HOUSING

Secs.

6400	General Provisions
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6400 GENERAL PROVISIONS

6400.1 The purpose of this chapter is to implement the Tax Abatement for Affordable Housing in High-Need Areas Amendment Act of 2020 (the “Act”), effective December 3, 2020 (D.C. Law 23-149; D.C. Official Code § 47-859.06), which provides an abatement of the tax imposed by D.C. Official Code § 47-811 on

certain real property developed with affordable housing in certain areas in high need of affordable housing.

6400.2 An agency's failure to act within a timeframe established in this chapter shall not constitute a default by the agency and shall not permit any person to take or refuse to take any action governed by the Act or any other law or regulation.

6400.3 No tax abatements granted pursuant to this chapter shall begin before October 1, 2023.

6401 ABATEMENT CAP AND AVAILABILITY

6401.1 Abatements granted pursuant to this chapter shall be subject to the availability of funding. When funds are available for this purpose, DHCD may award up to two hundred thousand dollars (\$200,000) in tax abatements for Fiscal Year 2024 and up to four million dollars (\$4,000,000) for each fiscal year thereafter.

6401.2 The amount of tax abatement that may be awarded to an individual development under this chapter shall be capped at twenty-five percent (25%) of the annual total abatement amount authorized for all developments in a given fiscal year, such that an approved development may receive up to fifty thousand dollars (\$50,000) of abatement in Fiscal Year 2024, and an approved development may receive up to one million dollars (\$1,000,000) of abatement in any subsequent fiscal year.

6402 REQUIREMENTS FOR TAX ABATEMENT

6402.1 To be eligible to be granted a tax abatement under this chapter, the following requirements must be satisfied:

- (a) The real property on which the development is located shall be in an eligible area;
- (b) At least one third (1/3) of the housing units developed or redeveloped on the real property shall, on average, be affordable to and rented by households earning eighty percent (80%) or less of the median family income during the period of the tax abatement, provided that no such household shall earn more than one hundred percent (100%) of the median family income;
- (c) The developer shall file an affordability covenant in the land records, as described in section 6405 of this chapter;
- (d) The developer shall enter into an agreement with the District that requires the developer to, at a minimum, contract with certified business enterprises for at least thirty-five percent (35%) of the contract dollar volume of the construction and operations of the development, in

accordance with section 2346 of the CBE Act (D.C. Official Code § 2-218.46), to the extent section 2346 is applicable;

- (e) The developer shall enter into a First Source Agreement for the operations of the development;
- (f) The developer shall, in addition to the one-third (1/3) requirement in paragraph (b) of this subsection, meet the distinct affordable-housing requirements of the Inclusionary Zoning Program;
- (g) The developer shall enter into an abatement agreement with DHCD setting forth the requirements of this chapter and such other terms and conditions as DHCD deems appropriate; and
- (h) The developer and development shall satisfy the other requirements of this chapter.

6402.2 As provided D.C. Official Code § 47-859.06(f), the requirements of the First Source Act shall not apply to the construction or development of a development granted a tax abatement under this chapter.

6403 APPLICATION; COMPETITIVE PROCESS

6403.1 In order to be considered for the grant of a tax abatement under this chapter, a developer shall submit an application to DHCD. The application shall be in such a form and include such information as may be required by DHCD.

6403.2 An application for a tax abatement under this chapter may be submitted by a developer only in response to a competitive process initiated by DHCD. The competitive process shall set forth the requirements of an application and the standards by which applications will be reviewed and tax abatements granted.

6403.3 At a minimum, each application shall be required to include:

- (a) The name of the owner of the real property on which the development is to be located, as such owner is identified in the land records;
- (b) The eligible area in which the development is located;
- (c) The address of the development;
- (d) The square and lot number(s) of the development;
- (e) The total number of residential units that have been developed or redeveloped as part of the development;

- (f) The total number of affordable rental units that have been developed or redeveloped as part of the development;
- (g) For each such affordable rental unit, the number of bedrooms in the unit and the median family income level of affordability for the unit;
- (h) An acknowledgement that the affordable rental units shall be administered in the same manner as, and pursuant to the same rules and standards of, Inclusionary Units for the term of the tax abatement;
- (i) A statement that the attachments required by section 6403.4 of this chapter have been submitted as part of the application; and
- (j) The annual dollar amount of tax abatement requested.

6403.4 The developer's application shall include the following attachments:

- (a) The documents required by section 6403.3 of this chapter;
- (b) Three (3) dated photographs of the development taken within the thirty (30) day period that precedes the date of submission of the developer's application;
- (c) If applicable, a copy of the agreement the developer executed with DSLBD requiring the developer to, at a minimum, contract with certified business enterprises for at least thirty-five percent (35%) of the contract dollar volume of the construction and operations of the development, in accordance with section 2346 of the Certified Business Enterprise Act (D.C. Official Code § 2-218.46), and a certification from DSLBD that the developer met the requirements of the CBE agreement.
- (d) An area map showing the boundaries of the eligible area with the development identified by a location arrow;
- (e) A copy of the certificate of occupancy for the development;
- (f) A copy of the First Source Agreement for the operations of the development and a certification from DOES that the developer is in compliance with the requirements of that agreement.
- (g) A calculation of the annual dollar amount of tax abatement being requested, showing the financial need for the abatement.

6403.5 Outside of the competitive process, DHCD may issue a pre-construction conditional eligibility determination stating that the development, as proposed, may qualify for an abatement under this chapter subject to the availability of

appropriated funds, if the developer submits a request for determination that includes, at a minimum, the following:

- (a) The name of the owner of the real property on which the development is to be located, as such owner is identified in the land records;
- (b) The eligible area in which the development is to be located and an area map showing the boundaries of the eligible area with the development identified by a location arrow;
- (c) The address of the development;
- (d) The square and lot number(s) of the development;
- (e) The total number of residential units that will be developed or redeveloped as part of the development;
- (f) The total number of affordable rental units that will be developed or redeveloped as part of the development;
- (g) For each such affordable rental unit, the number of bedrooms that will be in the unit and the median family income level of affordability that will be established for the unit;
- (h) An acknowledgement that the affordable rental units shall be administered in the same manner as, and pursuant to the same rules and standards of, Inclusionary Units for the term of the tax abatement;
- (i) A statement that the attachments required by section 6403.4 of this chapter have been submitted as part of the request; and
- (j) The annual dollar amount of tax abatement requested.

6404 APPLICATION REVIEW AND CERTIFICATION PROCESS

- 6404.1 DHCD shall review each application submitted in accordance with section 6403 in accordance with the standards of the competitive process.
- 6404.2 Within thirty (30) business days after receiving a complete application, DHCD shall review the application and approve the application, deny the application, or request additional information from the applicant.
- 6404.3 If DHCD approves an application, DHCD shall:
 - (a) Execute an abatement agreement and affordability covenant with the developer;

- (b) Certify to OTR the development's eligibility for the tax abatement. The certification shall include:
 - (i) The street address, square, suffix, and lot of the real property on which the development is located;
 - (ii) The date the certificate of occupancy was issued for the final housing unit counted toward satisfying the affordability requirements of the Act and this chapter;
 - (iii) The dates the tax abatement begins and ends;
 - (iv) The annual dollar amount of the tax abatement and the schedule of the tax abatement dollar amounts to be reflected on the real property's tax bills; and
 - (v) A statement that the conditions required by D.C. Official Code § 47-859.06(a) and this chapter have been satisfied; and
- (c) Provide the developer a copy of the certification DHCD provided to OTR.

6404.4 An approved tax abatement shall begin in the tax year immediately following the tax year during which the certificate of occupancy was issued for the final housing unit counted toward satisfying the affordability requirement of the Act and shall continue for a period of thirty (30) tax years; provided that the abatement is not earlier terminated;

6404.5 Notwithstanding section 6404.4, DHCD may approve a tax abatement to continue for forty (40) tax years after the tax year during which the certificate of occupancy is issued for the final housing unit counted toward satisfying the affordability requirement of the Act if the developer provided in its application information showing a need for a tax abatement of forty (40) tax years for the development and DHCD determines that it is in the interests of the District to award a tax abatement of forty (40) years for the development.

6404.6 If an application is not complete, DHCD shall transmit to the developer a request for the additional information required for consideration of the application. Absent additional guidance given in the competition, the date of the submission by the developer of its application to DHCD for a tax abatement shall be the date on which DHCD has determined that the application is complete.

6404.7 If DHCD denies an application, DHCD shall transmit to the developer a denial letter.

6404.8 An application shall be denied if:

- (a) The amount of the tax abatement requested exceeds the maximum amount set forth in this chapter;
- (b) The development is ineligible for the abatement; or
- (c) The development is not approved for the tax abatement based on the competitive process.

6405 AFFORDABILITY COVENANT

6405.1 Prior to the issuance of the tax abatement, the developer shall file an affordability covenant in the land records, which shall be binding on the developer and all of its successors and assigns in interest with respect to the development, covenanting to comply with the requirements of the Act and this chapter.

6405.2 The affordability covenant shall be in a form found legally sufficient by the Office of the General Counsel of DHCD and at a minimum shall confirm the following:

- (a) The affordable rental units shall be administered in the same manner as, and pursuant to the same rules and standards that apply to, Inclusionary Units, including Title 14 Chapter 22 of the DCMR;
- (b) The affordable rental units shall meet the square footage requirements in the Inclusionary Zoning Regulations;
- (c) The affordable rental units shall be identical in exterior design, materials, and finishes to market-rate units;
- (d) The interior amenities of the affordable rental units, such as finishes and appliances, shall be identical to the interior amenities of market-rate units;
- (e) The time period during which each affordable rental unit must be maintained as an affordable rental unit;
- (f) The income restrictions applicable to households residing in affordable rental units;
- (g) The number of affordable rental units required to be included and maintained as part of the development;
- (h) The method by which the income of a household residing in an affordable rental unit will be calculated;

- (i) The maximum allowable median family income level for each affordable rental unit and the maximum allowable rents based on the Inclusionary Zoning price schedule.”
- (j) Requirements for annual re-certification of household income and size for each affordable rental unit;
- (k) Initial designation of the affordable rental units; and
- (l) How affordable rental units will be redesignated if a household’s income exceeds the maximum median family income level for the unit upon renewal;

6406 ONGOING AFFORDABLE HOUSING REQUIREMENTS

- 6406.1 To continue to be eligible to receive the tax abatement provided by this chapter and the Act, at least one third (1/3) of the housing units in the development shall, for the duration of the tax abatement period, be affordable to and rented by households that earn on average eighty percent (80%) of the median family income.
- 6406.2 At the time of each lease execution for an affordable rental unit, the developer shall calculate the average household income for the units considered under the one-third (1/3) requirement described in section 6402.1(b). If such average household income exceeds eighty percent (80%) of the median family income, the real property on which the development is located shall become ineligible to receive a tax abatement under this chapter.
- 6406.3 During the initial lease-up of the development, the household income of a leasing household of an affordable rental unit shall not exceed one hundred percent (100%) of the median family income.
- 6406.4 Operation of the affordable rental units, including calculation of incomes, maximum allowable rents, renewals, and re-certifications of income and household size, shall follow the rules and standards of the Inclusionary Zoning Program, including re-designation of units if a household’s income exceeds the maximum median family income upon lease renewal.

6407 NONCOMPLIANCE

- 6407.1 If at any time during the term of the tax abatement, DHCD determines that the development has become ineligible for the tax abatement by not complying with the recorded covenant, DHCD shall:
 - (a) Notify OTR of the ineligibility and specify the date that the development became ineligible; and

- (b) Notify the developer that the development has become ineligible and OTR has been notified.

6407.2 The entire development shall be ineligible for the abatement on the first day of the tax year following the date when the ineligibility occurred.

6499 DEFINITIONS

When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Act - the Tax Abatements for Affordable Housing in High-Need Areas Amendment Act of 2020 effective December 3, 2020 (D.C. Law 23-149; D.C. Official Code § 47-859.06).

Affordable rental unit – a housing unit that is income and rent restricted.

Annual income – annual income as defined in section 2299.1 of the Inclusionary Zoning Regulations (14 DCMR 2299.1).

Bedroom – a room in a development, with immediate access to an exterior window and a closet, that is designated as a “bedroom” or “sleeping room” on construction plans submitted with an application for a building permit for the development.

CBE Act - the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*).

Certified business enterprise - a business enterprise certified pursuant to the CBE Act.

Competitive process - a request for applications (“RFA”) or similar process by which applications for tax abatements under this chapter are solicited or accepted by DHCD.

DCMR– the District of Columbia Municipal Regulations.

DCRA– the Department of Consumer and Regulatory Affairs

Developer– the owner or owner’s agent of a development.

Development – the project that produces housing units on real property.

DHCD– the Department of Housing and Community Development.

DOES – the Department of Employment Services.

DSLBD– the Department of Small and Local Business Development.

Eligible area– each area defined as a “high-need affordable housing area” in the Act, which includes the Rock Creek West, Rock Creek East, Capitol Hill, and Upper Northeast planning areas identified in the District’s Housing Equity Report, (available from <https://housing.dc.gov>) published in October 2019, plus one thousand feet (1,000 ft.) in any direction beyond any boundary of these planning areas.

Final certificate of occupancy - a document issued by DCRA certifying a building’s compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupancy.

First Source Act–the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.01 *et seq.*).

First Source Agreement - an agreement with the District governing certain obligations of the developer regarding job creation and employment, pursuant to section 4 of the First Source Act (D.C. Official Code § 2-219.03) and Mayor’s Order 83-265, dated November 9, 1983.

Household – all persons who will occupy an affordable rental unit, which may, subject to occupancy standards contained in Title 14 Chapter 22 of the DCMR, be:

- (a) A single family;
- (b) One (1) person living alone;
- (c) Two (2) or more families living together; or
- (d) Any other group of related or unrelated persons who share living arrangements.

HUD – the United States Department of Housing and Urban Development.

Inclusionary Unit – a dwelling unit set aside for sale or rental as required by the Inclusionary Zoning Program.

Inclusionary Zoning Program – all of the provisions of the Inclusionary Zoning Regulations and the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D. C. Official Code § 6-1041.01 *et seq.*).

Inclusionary Zoning Regulations – the regulations published at Title 14, Chapter 22 of the District of Columbia Municipal Regulations.

Land records – the land records of the Office of the Recorder of Deeds.

Median family income - the median family income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by HUD, adjusted for household size without regard to any adjustments made by HUD for the purposes of the programs it administers.

Operations –all property maintenance, resident services, and related functions necessary to operate and maintain a development.

OTR– the Office of Tax and Revenue.

All persons desiring to comment on the proposed regulations should file comments in writing no later than thirty (30) days after the publication of this notice in the *D.C. Register*. Comments should identify the commenter and be clearly marked “Comments for Rules on Tax Abatement for Affordable Housing in High-Needs for Affordable Housing Areas Rules.” Comments may be (1) mailed or hand-delivered to DHCD, 1800 Martin Luther King, Jr., Ave, SE, Washington, D.C. 20020, Attention: DHCD HANTA Proposed Rule Comments, Director’s Office or (2) sent by e-mail to regs.dhcd@dc.gov with the subject indicated as “Comments on HANTA Proposed Rules.”